

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WALKER, Nathaniel)	
)	
Plaintiff,)	
v.)	Case No:
)	
U.S. Department of Homeland Security,)	FILED: JUNE 19, 2008
Secretary Michael CHERTOFF; United States)	08CV3512
Citizenship and Immigration Services,)	JUDGE HOLDERMAN
Ruth A. DOROCHOFF, Chicago District)	MAGISTRATE JUDGE ASHMAN
Director; Jonathan SCHARFIN, Acting Director,)	
USCIS; Michael MUKASEY, US Attorney)	TC
General and the United States of America,)	
)	
Defendants.)	

COMPLAINT FOR WRIT OF MANDAMUS

NOW COMES the Plaintiff NATHANIEL WALKER (hereinafter "Plaintiff"), by and through his attorneys, AzulaySeiden Law Group, and complains as follows:

STATEMENT OF ACTION

1. This action is brought to compel action on Plaintiff's properly filed Petition for Alien Relative ("Form I-130 Petition") with the United States Citizenship & Immigration Services ("USCIS") in Chicago, Illinois. To the Plaintiff's detriment, Defendants have failed to adjudicate the Application.

PARTIES

2. Plaintiff is a native and citizen of the United States. In 2006, Plaintiff filed an I-130 petition on behalf of his wife, Clementina Walker ("Clementina"), which remains pending to this day.

3. Defendant Michael CHERTOFF ("Chertoff"), the Secretary for the Department of

Homeland Security (“DHS”), is being sued in his official capacity only. Chertoff is responsible for adjudication of Form I-130 Petitions pursuant to 8 U.S.C. §1225.

4. Defendant, Ruth DOROCHOFF (“Dorochoff”), is the director of USCIS, Chicago, and is being sued in her official capacity only. Dorochoff is charged with supervisory authority over all of Chicago CIS operations and CIS agents and officers acting in their official capacity.

5. Defendant, Jonathan SCHARFIN, is the Acting Director of USCIS and is being sued in his official capacity only.

6. Defendant, Michael MUKASEY (“Mukasey”) is the Attorney General of the United States and is being sued in his official capacity only.

JURISDICTION

7. This Court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. §1331; 28 U.S.C. §1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§2201-2202 and the relief is requested pursuant to these statutes.

8. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States.

9. This Court has jurisdiction to hear actions arising from claims that an agency or an officer or employee of a government agency failed to act in its official capacity and the person to whom the duty owed suffered a legal wrong. 5 U.S.C. §702.

10. This action invokes the Plaintiff’s right to due process guaranteed by the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction.

11. This action is brought due to the failure of the USCIS and its officers to perform their duty to adjudicate the Plaintiff's Form I-130 Petitions within a reasonable amount of time. Failure to adjudicate said applications has resulted in harm to the Plaintiff.

12. Federal courts retain jurisdiction over adjudication matters when the INS (now USCIS) refuses to adjudicate their applications. Iddir v. INS, 166 F.Supp.2d 1250, 1260 (N.D. Ill. 2001).

13. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") does not divest this Court of jurisdiction because the Plaintiff is not seeking a review of a denial; he is seeking to have the applications adjudicated, which is among the duties conferred upon the Defendants by Congress. Id. at 1256.

VENUE

14. Venue is proper in this Court pursuant to 28 USC §1391(e), in that this is an action brought against officers and agencies of the United States in their official capacities, in the District where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

15. Plaintiff's Form I-130 Petition was properly filed and, to Plaintiff's knowledge, remain pending with the National Benefits Center.

EXHAUSTION OF REMEDIES

16. Plaintiff has exhausted all administrative remedies. Plaintiff has made numerous inquiries concerning the status of his Form I-130 Petitions and Defendants have failed to properly respond.

CAUSE OF ACTION

17. Plaintiff is a native and citizen of the United States. See Exhibit A.

18. In 2005, Plaintiff married Clementina, a native and citizen of Nigeria. See Exhibits B and C.

19. On March 12, 2006, Plaintiff filed an I-130 Petition on behalf of his wife, Clementina. This I-130 was rejected as Plaintiff failed to concurrently file an I-485 application.

20. Subsequently on March 17, 2006, Plaintiff filed a second I-130 petition on Clementina's behalf along with an I-485 application, both of which remain pending with the USCIS 2 years after their filing. See Exhibits D and E.

21. On April 27, 2006, USCIS issued a Request for Evidence requesting additional documentation of the sponsor's federal tax returns. See Exhibit F. Plaintiff, through prior counsel, responded to this request and Defendant acknowledged the response in June 2006.

22. Subsequently, Plaintiff attended an initial interview on December 21, 2006.

23. On May 22, 2007, Plaintiff attended an infopass session and was told that their case was still pending. See Exhibit G.

24. On April 29, 2008, well beyond 60 days from the RFE receipt date, Plaintiff sent a status inquiry letter to USCIS, however, Plaintiff did not receive a response. See Exhibit H.

25. On May 12, 2008, Plaintiff retained AzulaySeiden Law Group in this matter.

26. On June 4, 2008, Plaintiff, through his attorney, attended an infopass at the Chicago, IL. office. USCIS stated that Plaintiff's case was still under review by the officer.

27. On June 10, 2008, Plaintiff made an online inquiry as to the status of his pending I-

130 petition which indicated that the case is pending at the National Benefits Center. See Exhibit

I.

28. There has not yet been a decision on Plaintiff's Form I-130 Petition, despite the fact that the petition has been pending for two years and throughout that time numerous inquiries have been made with the USCIS.

29. Plaintiff has been greatly damaged by the failure of the Defendants to act in accordance with their duties under law: Plaintiff has a meritorious I-130 Petition that has not been adjudicated because of the Defendants refusal to do so.

30. The Defendants' delay in processing of Plaintiff's Form I-130 Petitions has further deprived the Plaintiff of his right to due process under the law as guaranteed by the Fifth Amendment of the United States Constitution.

31. The Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. §701 et seq. are unlawfully withholding and unreasonably delaying action on Plaintiff's Form I-130 Petitions and have consequently failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.

32. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of his petitions, to no avail. Accordingly, Plaintiff has been forced to pursue the instant action.

PRAYER

WHEREFORE, Plaintiff requests that this Honorable Court enter an order:

- (a) Requiring Defendants to adjudicate Plaintiff's Form I-130 Petitions;

- (b) Awarding Plaintiff reasonable attorney's fees pursuant to 28 U.S.C. §2412 for failure of the Defendants to perform their duties within a reasonable amount of time; and
- (c) Granting such other relief at law and in equity as justice may so require.

Date: _____

Respectfully Submitted,

Carolina Yamazaki
AzulaySeiden Law Group
205 North Michigan Avenue
40th Floor
Chicago, IL 60601
(312) 832-9200 x 132

08CV3512

JUDGE HOLDERMAN

MAGISTRATE JUDGE ASHMAN

TC




VOID IF ALTERED OR ERASED	
<div><div><p>CERTIFICATION OF VITAL RECORDS</p><p>COUNTY OF COOK STATE OF ILLINOIS</p><p>OFFICE OF THE COUNTY CLERK DAVID ORR</p><p>CERTIFICATION OF BIRTH</p><p>BIRTH NUMBER: 112-56-6096728</p><p>NAME: NATHANIEL WALKER, JUNIOR</p><p>DATE OF BIRTH: OCTOBER 27, 1956 SEX: MALE</p><p>PLACE OF BIRTH: CHICAGO, COOK COUNTY, ILLINOIS</p><p>MAIDEN NAME OF MOTHER: LEANAR ELDRIDGE</p><p>PLACE OF BIRTH OF MOTHER: MISSISSIPPI AGE: 27</p><p>NAME OF FATHER: NATHANIEL WALKER</p><p>PLACE OF BIRTH OF FATHER: MISSISSIPPI AGE: 31</p><p>DATE FILED: OCTOBER 30, 1956 DATE ISSUED: NOVEMBER 7, 2005</p><p>0989454</p><p>This is to certify that this is a true and correct abstract from the official record filed with the Illinois Department of Public Health.</p><p>ISSUED AT: COUNTY BUILDING CHICAGO, ILLINOIS 60602-1304</p><p>DAVID D. ORR COUNTY CLERK</p><p><i>David D. Orr</i></p><p>This copy is not valid unless displaying embossed seals of Cook County and County Clerk signature.</p><p>VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED</p><div></div></div></div>	
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EXHIBIT
A

COUNTY OF COOK
STATE OF ILLINOIS
OFFICE OF THE COUNTY CLERK
DAVID ORR

CERTIFICATION OF MARRIAGE
BETWEEN

GROOM'S NAME: NATHANIEL
AGE: 49
WALKER JR.

BRIDE'S NAME: CLEMENTINA
AGE: 42
NKEONYELU UDE

DATE OF MARRIAGE: DECEMBER 14, 2005

WERE UNITED IN MARRIAGE IN THE COUNTY OF COOK, AND STATE OF ILLINOIS

CIVIL
IN A
BY CEREMONY

NAME: MARCELLA C. LIPINSKI
OFFICIATE TITLE: JUDGE

PLACE OF MARRIAGE: MARKHAM, ILLINOIS

DATE RECORDED: JANUARY 05, 2006
APPLICATION DATE: DECEMBER 05, 2005

1190069

This is to certify that this is a true and correct abstract from the official record
filed with the office of the Cook County Clerk.

ISSUED AT: DISTRICT 5 COURT BUILDING
MARKHAM, ILLINOIS 60428-5908

04/07/2006 09:55

This copy is not valid unless displaying embossed seals of Cook County and County Clerk signature

DAVID D. ORR
COUNTY CLERK

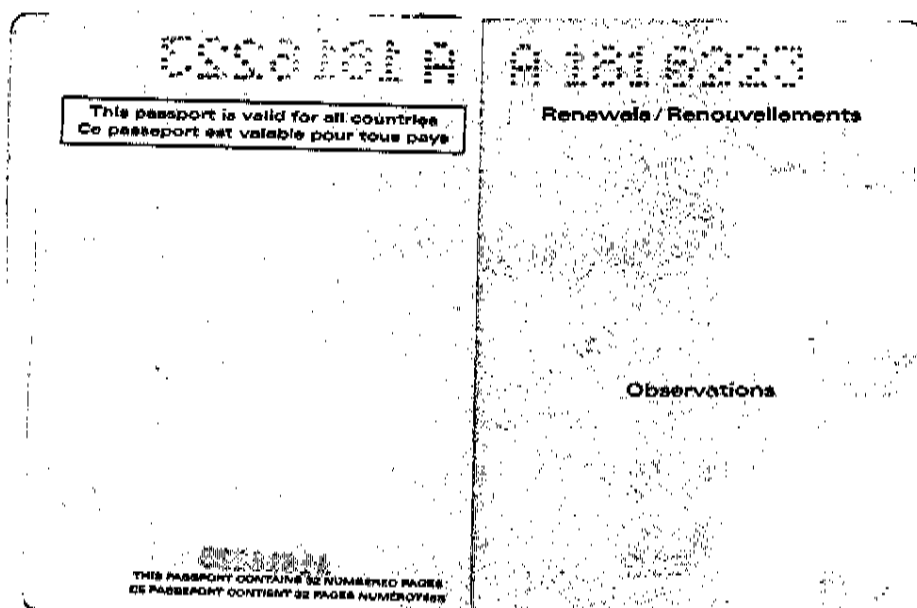
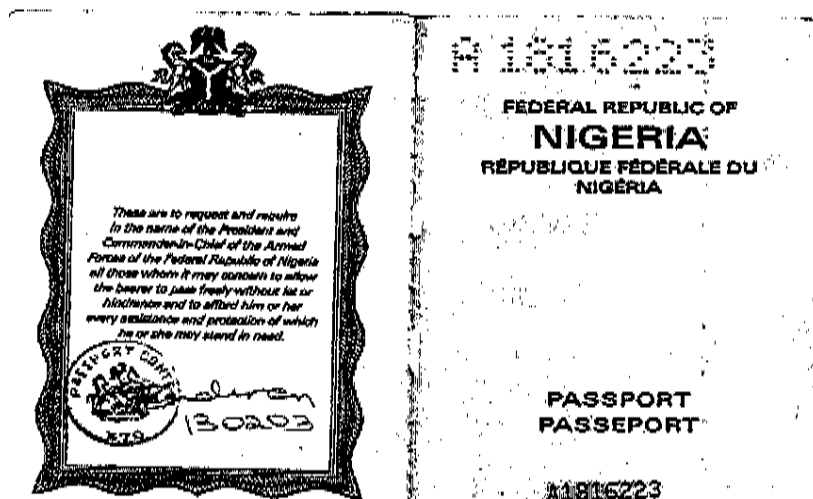
David D. Orr

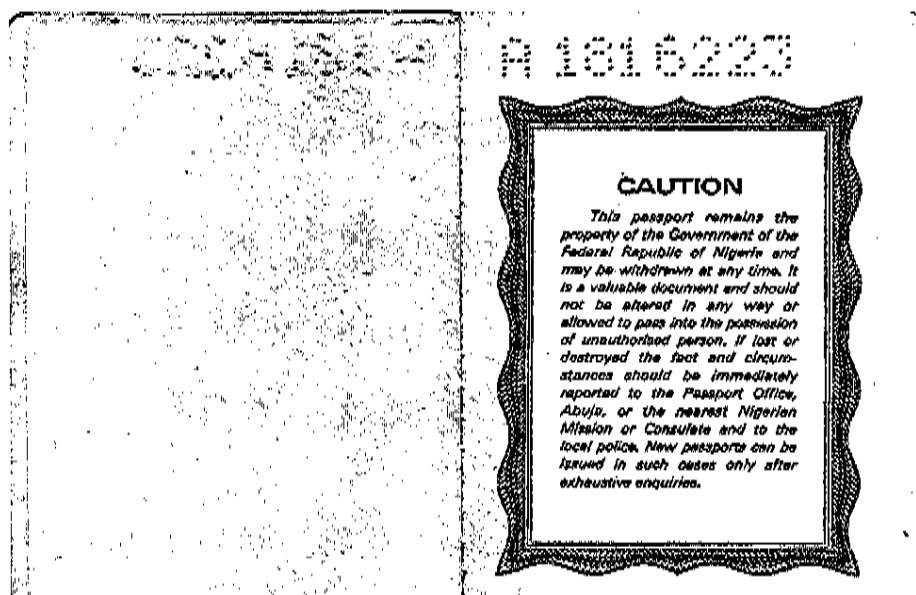
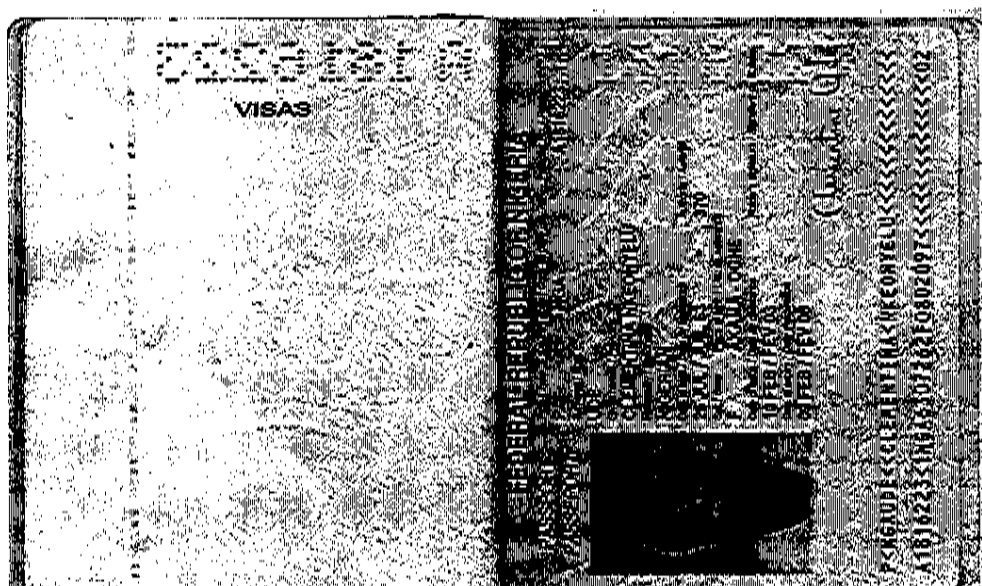
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EXHIBIT

B



**CAUTION**

This passport remains the property of the Government of the Federal Republic of Nigeria and may be withdrawn at any time. It is a valuable document and should not be altered in any way or allowed to pass into the possession of unauthorised person. If lost or destroyed the fact and circumstances should be immediately reported to the Passport Office, Abuja, or the nearest Nigerian Mission or Consulate and to the local police. New passports can be issued in such cases only after exhaustive enquiries.



THE UNITED STATES OF AMERICA

Receipt Number: MSC-06-168-19962		Case Type: I-130 - Petition for Alien Relative
Received Date: March 17, 2006	Priority Date:	Petitioner: WALKER, NATHANIEL
Notice Date: March 21, 2006	Page 1 OF 1	Beneficiary: WALKER, CLEMENTINA

NATHANIEL WALKER 28 167TH PLACE CALUMET CITY IL 60409	Notice Type: Receipt Notice Amount Received: \$190.00
---	--

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

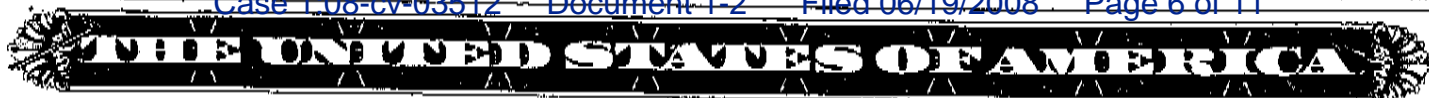
U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283





Receipt Number: MSC-06-168-19960		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status	
Received Date: March 17, 2006	Priority Date:	Applicant: A099305666 WALKER, CLEMENTINA	
Notice Date: March 21, 2006	Page 1 OF 1	ASC Code: 3	

CLEMENTINA WALKER 28 167TH PLACE CALUMET CITY IL 60409	Notice Type: Receipt Notice Amount Received: \$395.00
--	--

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



5170590

0003175809

Form I



U.S. Citizenship
and Immigration
Services

Date: 4/27/2008

EKECHUKWU, EBERE

53 WEST JACKSON BOULEVARD STE 1440
CHICAGO, IL 60604

File:



MSC0616819960

A99305666

In RE: WALKER, CLEMENTINA

Request for Additional Evidence (I-485)

This office is unable to complete the processing of your Application to Register Permanent Residence or Adjust Status, (Form I-485) without additional information. Please submit the information requested below. You must submit the information within 87 (eighty-seven) days to the following address: U.S. Department of Homeland Security, PO Box 648006, Lee's Summit, MO 64064. Failure to do so will result in a denial. Please include this letter with your response.

You are ineligible for interim employment authorization pursuant to Title 8, Code of Federal Regulations, Section 103.2(b)(10)(ii) until ninety (90) days after the missing initial evidence is received.

All copies must be clear and legible. If you submit a document in any language other than English, it must be submitted with a full English translation. The translator must certify that the translation is complete and accurate, and that he or she is competent to translate. You must submit both the foreign language document and the English translation.

F. ☒ (9) The sponsor and joint sponsor (if required) on Form I-864 must submit the following:

- Federal income tax returns and W-2s for the most recent tax year or certified Internal Revenue Service (IRS) copies. To obtain return transcripts of your income tax records from the IRS, you may complete Form 4506-T, Request for Transcript of Tax Return, found on the Internet at <http://www.irs.gov/> or call toll-free (800) 829-1040 to order a "Return Transcript." If the sponsor was not required to file a federal tax return for the most recent tax year, the sponsor must provide an explanation as to why s/he was not required to file federal income taxes.

- Evidence of current employment or self-employment including a letter from each employer on business stationery, showing beginning date of employment, type of work performed, number of hours worked per week, and salary or wages paid. If you are self-employed, submit a recently dated letter on business letterhead or a business license.

F. ☒ (11) We are unable to determine if your household income meets or exceeds 125% of the federal poverty line for the household size claimed on Form I-864 based on the documents submitted with Form I-864. Submit proof that the petitioner's household income meets or exceeds 125% of the federal poverty line. If the petitioner's household income does not meet or exceed 125% of the federal poverty line, you must obtain one joint sponsor whose household income meets or exceeds 125% of the federal poverty line for the joint sponsor's household size. If required, the joint sponsor must submit the documents listed below and a completed and signed Form I-864.

- Federal income tax returns and W-2s for the most recent tax year or certified Internal Revenue Service (IRS) copies. To obtain return transcripts of your income tax records from the IRS, you may complete Form 4506-T, Request for Transcript of Tax Return, found on the Internet at <http://www.irs.gov/> or call toll-free (800) 829-1040 to order a "Return Transcript." If the sponsor was not required to file a federal tax return for the most recent tax year, the sponsor must provide an explanation as to why s/he was not required to file federal income taxes.

- Evidence of current employment or self-employment including a letter from each employer on business stationery, showing beginning date of employment, type of work performed, number of hours worked per week, and salary or wages paid. If you are self-employed, submit a recently dated letter on business letterhead or a business license.



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U.S. Citizenship
and Immigration
Services[Home](#)[DHS.GOV](#)

Please review the information you have entered:

First Name: Clementina

Middle Name: N

Last Name: Walker

Date of Birth: 26 July, 1963

Zip Code: 60409

Country: UNITED STATES OF AMERICA

Telephone Number: (708) 730 - 9583

Number of persons: 2

e-Mail Address: CLEMENTINA_WALKER@YAHOO.COM

Alien Number (A-number): A- 099305666

Receipt Number: MSC0616819960

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Receipt Number: MSC0010819900

Location:

CHICAGO DISTRICT OFFICE
101 W. Congress Parkway
Chicago, IL 60605
United States Of America

Appointment Date:

Tuesday
May 22, 2007 [Change](#)

Appointment Time:

9:15 AM

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Done Internet



EBERE N. EKECHUKWU & ASSOCIATES, P. C.
ATTORNEYS AT LAW

THE MONADNOCK BUILDING
53 WEST JACKSON BOULEVARD
SUITE 1440
CHICAGO, ILLINOIS 60604

*EBERE N. EKECHUKWU, LL.M. (HARV.)

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OAK BROOK OFFICE

1301 West 22nd Street, Suite 108

Oak Brook, Illinois 60523

Tel: (630) 572-0160

Fax: (630) 572-0166

April 29, 2008

Officer Fiscal
Bureau of Citizenship and Immigration Services
Examinations and Adjudications
101 West Congress Parkway
Chicago, Illinois 60605

RE: Form I-130: Petition for Alien Relative
Petitioner: Nathaniel Walker
Beneficiary: Clementina Walker
File No: A 99 305 666
Interview Date: 1/31/08

COPY

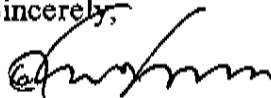
Dear Officer Fiscal:

I am writing to follow up on the above referenced application. We appeared before you for interview on January 31, 2008. At the end of the interview you informed us that you would notify us of your decision.

Would you please let us know when a decision would be made on this file?

Thank you for your prompt attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Ebere N. Ekechukwu

Enclosure





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Receipt Number: msc0616819962

Application Type: I130, IMMIGRANT PETITION FOR RELATIVE, FIANC(E), OR ORPHAN

Current Status: Case received and pending.

On March 21, 2006, we received this I130 IMMIGRANT PETITION FOR RELATIVE, FIANC(E), OR ORPHAN, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NATIONAL BENEFITS CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

You can choose to receive automatic case status updates, which will be sent via email. Please click here to create an account online.

If you would like to see our current Processing Dates for Applications and Petitions, click here.

Note: Case Status is available for Applications and Petitions which were filed at USCIS Service Centers. If you filed at a USCIS Local Office, your case status may not be reviewable online but for processing times on forms filed at that Office please, click here.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 - 5283 or 1-800-767-1833 (TTY).

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U.S. Department of Homeland Security

